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Nos. 01-1118, 01-1119

IN THE

Supreme Court of the United States

JOSEPH SCHEIDLER, *et al.*,
and
OPERATION RESCUE,
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

BRIEF FOR *AMICUS CURIAE* NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC., IN SUPPORT OF NEITHER PARTY

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INTERESTS OF *AMICUS CURIAE* NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.

The National Right to Work Legal Defense Foundation, Inc. ("Foundation") is a nonprofit, charitable organization that provides free legal assistance to individual employees who, as a consequence of compulsory unionism, have suffered violations of their right to work; their freedoms of association, speech, and religion; their rights to due process of law; and other fundamental liberties and rights guaranteed by the Constitution and laws of the United States.[1]

The Foundation gives legal aid to employees who have been physically injured by union violence as a result of exercising their legal rights. *Crawford v. United Steelworkers*, 335 S.E.2d 828 (Va. 1985); *Allen v. Machinists Local 1297*, 120 L.R.R.M. (BNA) 2501 (Ohio Ct. App. 1984), *rev'd in part*, 490 N.E.2d 865 (Ohio 1986); *Hinote v. Local 423, Oil, Chemical & Atomic Workers*, 777 S.W.2d 134 (Tex. Ct. App.), *error denied*, (Tex. 1989). The Foundation also has provided counsel in most United States Supreme Court cases involving the right to refrain from joining or supporting a labor organization as a condition of employment. *Air Line Pilots Ass'n v. Miller*, 523 U.S. 866 (1998); *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991); *Communications Workers v. Beck*, 487 U.S. 735 (1988); *Chicago Teachers Union, Local 1 v. Hudson*, 475 U.S. 292 (1986); *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

This case marks a watershed moment for the statutory construction of the Hobbs Act, 18 U.S.C. § 1951, as enunciated

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[1] Pursuant to Supreme Court Rule 37.6, the Foundation states that no counsel for a party authored this brief in whole or in part, and no person or entity other than the Foundation, its members, or counsel, made a monetary contribution to the preparation or submission of this brief.

in *United States v. Enmons*, 410 U.S. 396 (1973). This Court is confronted with the stark choice of applying *Enmons* to the conduct of Petitioners, or overruling the case. The Foundation, in its role supporting many of the most significant cases dealing with the abuses of compulsory unionism that have come before this Court and numerous lower courts, provides a unique perspective on this specific issue, and can aid the Court in analyzing this case.

This brief is filed with all parties' consent already on file with the Court.

SUMMARY OF ARGUMENT

In *Enmons*, a closely divided Court (5-4) construed the definition of "extortion" under the Hobbs Act to require that the "obtaining of property" be "wrongful." 410 U.S. at 399-400. Petitioners Scheidler, *et al.*, and Operation Rescue ("Petitioners" or "the protesters") seek to stop abortion, which is not a wrongful objective. Accordingly, under *Enmons*, an extortion claim under the Hobbs Act cannot be maintained against them.

The lower courts (but never this Court) have unanimously refused to apply *Enmons* beyond its case specifics for fear that "it could effectively repeal the Hobbs Act." *See* n.4, *infra*. This apprehension is well founded, for exempting all defendants seeking a legitimate objective from sanction would undermine the entire extortion prong of the Act. However, it is doctrinally untenable for a statutory interpretation of this Court to be arbitrarily limited because of its negative ramifications. *Stare decisis* commands that a Supreme Court construction of a statute be followed, unless this Court sees fit to overrule it.

The unpalatable ramifications of *Enmons* dictate overruling the decision, not artificially limiting its breadth. A statutory interpretation that cannot be generally applied, lest it subvert the

statute itself, is inherently flawed. This Court should overrule *Enmons* and reinstate the Hobbs Act's plain meaning, in which a wrongful objective is not a criterion for extortion.

ARGUMENT

I. Under *Enmons*, Petitioners' Objectives Must Be Wrongful to Establish Liability.

A. *Enmons* Holds That a Wrongful Objective Is a Prerequisite for Extortion.

The Hobbs Act defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). In *Enmons*, this Court held that the term "wrongful" applies not only to the means employed, but also to the "property" the defendant is seeking to "obtain." 410 U.S. at 399-400.

Enmons involved violent acts of property destruction by striking employees. Militants blew up a transformer substation, drained oil from one transformer, and shot three transformers with highpowered rifles. *Id.* at 398. The union was prosecuted for extortion under the Hobbs Act. The government contended that the "wrongfulness" element in the Act's statutory definition of extortion applies only to the means listed (force, violence, fear, color of official right), and is easily satisfied by the destruction of property. *Id.* at 399-400.

The *Enmons* majority rejected the government's argument that the adjective "wrongful" applies only to the means used:

> [The government's] interpretation of the Act slights the wording of the statute that proscribes obtaining property only by the "wrongful" use of actual or threatened force, violence, or fear. The term "wrongful," which on the face

> of the statute modifies the use of each of the enumerated means of obtaining property–actual or threatened force, violence, or fear–would be superfluous if it only served to describe the means used. For it would be redundant to speak of "wrongful violence" or "wrongful force" since, as the Government acknowledges, any violence or force to obtain property is "wrongful."

Id. (footnotes omitted). Instead, the term "wrongful" was held to modify the phrase "obtaining of property." *Id.* at 400 ("'wrongful' has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property").

Construing the definition of extortion in this fashion, the *Enmons* majority found certain union objectives, such as higher wages and benefits, not to be wrongful, resulting in "no 'wrongful' taking of the employer's property." *Id.* Dismissal of the extortion claim was affirmed.

Enmons, therefore, hold[s] that extortion under the Hobbs Act requires both a wrongful means and a wrongful end. As Judge Holschuh of the Sixth Circuit summarized:

> [A]s I read *Enmons*, use of wrongful *means*–and the use of violence on a picket line is clearly wrongful–is not enough to come within the coverage of the Act. To come within the prohibitions of the Act the *objective* must be wrongful, *i.e.*, the use of robbery or extortion or violence to obtain property to which the defendant "has no lawful claim."

United States v. Russo, 708 F.2d 209, 223 (6th Cir. 1983) (Holschuh, J., concurring) (emphasis in original); *see also United States v. Traitz*, 871 F.2d 368, 381 (3d Cir. 1989) ("in *Enmons* the Supreme Court found that an alleged extortionist must not only employ an unlawful *means* but must act in pursuit

of an unlawful *end*") (emphasis in original); *United States v. Clemente*, 640 F.2d 1069, 1076 (2d Cir. 1981) ("Extortion, as defined in the Hobbs Act, consists of the use of wrongful means to achieve a wrongful objective"); *Viacom Int'l, Inc. v. Icahn*, 747 F. Supp. 205, 210 (S.D.N.Y. 1990) ("There are two elements to a Hobbs Act violation: wrongful means and wrongful objective"); *Terzi Prods., Inc. v. Theatrical Protective Union*, 2 F. Supp. 2d 485, 505 (S.D.N.Y. 1998) ("[*Enmons*] found that [misconduct] had to be wrongful both in its means and in its ends").

B. Petitioners Are Not Liable for Extortion Under *Enmons* Because Their Objective Is Not Wrongful.

Enmons' construction of the Hobbs Act requires that Respondents demonstrate that it is "wrongful" for the protesters to obtain, or try to obtain, the objective which they seek. In this case, the protesters' objective is to stop abortions. *See National Organization of Women v. Scheidler*, 267 F.3d 687, 693 (7th Cir. 2001) ("defendant's goal is frankly to prevent abortions from taking place"). Opposing abortion and seeking to limit the performance of abortions is a legitimate objective:

> "[A] value judgment favoring childbirth over abortion" is proper and reasonable enough to be implemented by the allocation of public funds, and Congress itself has, with our approval, discriminated against abortion in its provision of financial support for medical procedures.

Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 274 (1993) (citations omitted).

Respondent National Organization for Women ("NOW") contends that "Petitioners here had no lawful claim to obtaining Respondents' property, namely their right to do business with one another." (NOW Opposition to Petition for Certiorari ("NOW Opp.") at 21.) NOW confuses the means with the ends.

The protesters do not seek to obtain Respondents' business. Their objective is to stop abortion. Disruption of an abortion clinic's business operations is merely the protesters' means of achieving this end.

In *Enmons*, the union's violent strike was designed to interfere with business operations. That disruption was not employed for its own sake, but "to obtain for the striking employees higher wages and other employment benefits from the Company." 410 U.S. at 398. The Court recognized that favorable employment terms were the property the union sought to obtain, not the employer's business operations.

Similarly, the protesters do not endeavor to disrupt the business operations of a health clinic just for the sake of doing so. Rather, their actions are a means of obtaining their overriding objective: stopping abortion. Thus, the protesters are not liable under *Enmons*.

II. *Enmons'* Interpretation of the Hobbs Act Cannot Be Limited to the Labor Context.

A. *Enmons* Is a Textual Interpretation of the Hobbs Act.

Respondent NOW contends that the legitimacy of the protesters' objective should not be considered because *Enmons* is limited to the collective bargaining context. (NOW Opp. at 21.) *Enmons* provides a textual interpretation of the definition of "extortion." Textual interpretations are of general application and do not vary based upon to whom a statute is being applied.

"The main issue before the Supreme Court [in *Enmons*] was whether the term 'wrongful' in the statute applied to the means used or to the ends sought by the alleged extortioner." *United States v. Sturm*, 870 F.2d 769, 772 (1st Cir. 1989); *see also C & W Constr. Co. v. Brotherhood of Carpenters &*

Joiners, Local 745, 687 F. Supp. 1453, 1468 (D. Haw. 1988) ("In interpreting the Hobbs Act, the Court focused on the word 'wrongful'"). The *Enmons* majority concluded that the term "wrongful" applies to the phrase "obtaining of property." 410 U.S. at 399-400 n.3; *see also Hall Am. Ctr. Assoc. Ltd. v. Dick*, 726 F. Supp. 1083, 1095 (E.D. Mich. 1989) ("*Enmons* interpreted 'extortion' in the Hobbs Act as consisting of the use of wrongful means to achieve a wrongful objective").

Some lower courts have justified restricting *Enmons* to union violence on the basis of the Court's analysis of legislative history. *See United States v. Agnes*, 753 F.2d 293, 298 (3d Cir. 1985); *United States v. Zappola*, 677 F.2d 264, 269 (2d Cir. 1982). *Enmons* cited legislative history for the proposition that Congress did not consider legitimate union goals to be wrongful objectives proscribed by the Hobbs Act. 410 U.S. at 401-08.[2] However, the Court's consideration of the legitimacy of the union's objectives proves that the *Enmons* majority saw a wrongful objective as a textual criterion for extortion under the Act. If the term "wrongful" did not modify "obtaining of property" in the definition of extortion, the legitimacy of the objective sought would be irrelevant.

The *Enmons* Court's consideration of the wrongfulness of the property the defendant sought is the result of statutory construction. In *Enmons*, the government argued that the legitimacy of the obtaining of property is irrelevant under the Hobbs Act. *Id.* at 400 n.3 (when "'wrongful' force and violence are used, even for a legal objective, the Government contends

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[2] Congress intended that "illegitimate objectives . . . , such as the exaction of personal payoffs, . . . not be exempted from the Act." 410 U.S. at 407. But, the majority concluded, legitimate union objectives, "such as higher wages in return for genuine services," *id.* at 400, were meant to be exempt from sanction.

that the statute is satisfied"). The Court's majority rejected this contention on textual grounds: "that interpretation simply accepts the redundancy of the term 'wrongful' whenever it applies to 'force' and 'violence' in the statute." *Id.* Thus, the Court held that the obtaining of property must also be "wrongful." *Id.* Legislative history was even utilized to support this construction of the statute's language. *See id.* at 399 n.2 ("Congressman Hobbs indicated that 'wrongful' was to modify the entire section") (citing 91 Cong. Rec. 11908).

It is arbitrary to limit *Enmons*' interpretation of the Hobbs Act only to unions, as Respondent NOW suggests. The adjective "wrongful" would have to modify the term "obtaining property" only when a union is a defendant, but not when the statute is being applied to anyone else. The rules of grammar are not altered when a union happens to be a defendant.

B. *Stare Decisis* Requires That *Enmons* Be Followed, Regardless of Its Negative Ramifications, Unless the Supreme Court Overrules the Decision.

Although *Enmons* is a statutory construction, lower courts nonetheless have limited it to "a labor exception to culpability for Hobbs Act extortion," *United States v. Mulder*, 273 F.3d 91, 104 (2d Cir. 2001), *cert. denied sub nom. Johnson v. United States*, __ U.S. __, 122 S. Ct. 1344 (2002); *see also United States v. Taylor*, 92 F.3d 1313, 1319 (2d Cir. 1996) (*Enmons* is a "labor exception" to the Act). This is based on fear of the decision's odious ramifications: "Despite its broad language, most federal appellate courts, including this court, have restricted *Enmons* and its claim of right defense to the labor context, fearing that a broader application 'could effectively

repeal the Hobbs Act.'" *Sturm*, 870 F.2d at 772.[3] As discussed in Part III, *infra*, this apprehension is well founded.

The refusal of a lower court to apply *Enmons* beyond the labor context, because of the negative consequences of doing so, is doctrinally untenable. Until *Enmons* is overruled, *stare decisis* mandates that its interpretation of the Hobbs Act be followed. *See Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312 (1994) ("It is this Court's responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law"). An artificial restriction which lacks a textual basis cannot be sustained, irrespective of the validity of the policy justifications supporting it. This Court's recent rejection of two special exceptions to 18 U.S.C. § 1001, which criminalizes making false statements, is dispositive.

In *Brogan v. United States*, 522 U.S. 398 (1998), the "exculpatory no" exception to a false statement, that had been widely adopted by the lower courts, was repudiated because it lacked a basis in the text of the statute. *See id.* at 400-04. The lower courts' policy rationales for the exception were of no avail. "Courts may not create their own limitations on legislation, no matter how alluring the policy arguments for doing so, and no matter how widely the blame may be spread." *Id.* at 408.

In *Hubbard v. United States*, 514 U.S. 695 (1995), this Court refused to adopt the "judicial function exception" that lower courts had invented to limit the negative effects of a statutory interpretation of § 1001 made in *United States v. Bramblett*, 348 U.S. 503 (1955). *Hubbard*, 514 U.S. at 713.

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[3] Citing *United States v. Cerilli*, 603 F.2d 415, 419 (3d Cir. 1979); *accord Zappola*, 677 F.2d at 269; *United States v. Porcaro*, 648 F.2d 753, 760 (1st Cir. 1981); *United States v. French*, 628 F.2d 1069, 1075 (8th Cir. 1980).

"We think the text of [18 U.S.C.] § 1001 forecloses any argument that we should simply ratify the body of cases adopting the judicial function exception." *Id.*; *see also id.* at 716 (Scalia, J., concurring) (rejecting exception as arbitrary). Rather, the *Hubbard* Court overruled *Bramblett*'s interpretation that the lower courts were attempting to limit. *See* Part IV(A), *infra*.

That lower courts recoil from applying *Enmons* because it would undermine the Hobbs Act is grounds for overruling *Enmons*, not arbitrarily limiting its coverage. *See* Part IV *infra*. However, the subservient role of lower courts prevents those courts from overruling *Enmons*, as only this Court may do so. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("'[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions'") (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)). Thus, lower courts only have the option of applying *Enmons* (and its consequences) or arbitrarily limiting it. Faced with this Hobson's choice, the lower courts have simply selected the lesser of two evils.

This Court's status as the nation's highest court exempts it from the hierarchical restrictions that have compelled lower courts to limit *Enmons* to alleviate its negative effects. This Court is empowered to correct flawed previous decisions. *See Patterson v. McLean Credit Union*, 485 U.S. 617, 617-18 (1988) (citing cases where previous statutory interpretations have been overruled). This case confronts the Court with a compelling reason to exercise this power.

III. The Ramifications of Applying *Enmons'* Interpretation of Extortion Under the Hobbs Act Are Unpalatable.

If this Court does not overrule *Enmons*, the principles of *stare decisis* mandate that it be applied to the case at hand. *See Hohn v. United States*, 524 U.S. 236, 252-53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality") (citing *Rodriguez de Quijas*, 490 U.S. at 494). The disturbing implications of following *Enmons* should give this Court pause.

The lower courts have overwhelmingly recognized that *Enmons* has the potential to undermine the entire extortion prong of the Hobbs Act.[4] If pursuit of a legitimate objective automatically exculpates a defendant, a substantial amount of conduct previously considered extortionate would no longer be. The Hobbs Act's very purpose, which is to prevent interference with interstate commerce, would be almost completely undercut. *See* 18 U.S.C. § 1951(a); *Stirone v. United States*, 361 U.S. 212, 215 (1960).

An illustrative example is *Overnite Transportation Co. v. Teamsters*, 168 F. Supp. 2d 826 (W.D. Tenn. 2001). In *Overnite*, the complaint alleged that the Teamsters were responsible for 221 separate criminal acts, including shooting at truck drivers and dropping cinder blocks on Overnite trucks

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[4] *See Sturm*, 870 F.2d at 772 ("broader application [of *Enmons*] 'could effectively repeal the Hobbs Act'"); *Cerilli*, 603 F.2d at 419 ("Any application of *Enmons* to cases outside of [the labor] context must be done with caution. Otherwise there is a danger that *Enmons* . . . could effectively repeal the Hobbs Act"); *Russo*, 708 F.2d at 215 (same); *United States v. Debs*, 949 F.2d 199, 200-01 (6th Cir. 1991) (*en banc*); *Porcaro*, 648 F.2d at 760 ("we concur in [the *Cerilli* Court's] reading of *Enmons*"); *French*, 628 F.2d at 1075.

from highway overpasses. *Id.* at 834-35. Over 50 of the acts alleged were found to adequately plead attempted murder. *Id.* at 846. All allegations had to be presumed factually true, as the District Court was addressing a motion to dismiss.

Despite the scope and savagery of the union's campaign, *Enmons* mandated that all of plaintiffs' claims under the Hobbs Act be dismissed because the defendants were ostensibly pursuing legitimate objectives. *Id.* at 842. The *Overnite* court also dismissed plaintiffs' claims under all other extortion provisions that could serve as predicate offenses under the Racketeer Influenced and Corrupt Organization Act, such as the Travel Act and state extortion statutes, because of *Enmons*. *Id.*

Enmons' continuing validity as precedent mandates that the free pass granted to the Teamsters in *Overnite* be extended to *all* other defendants who seek a legitimate objective. Defendants using wrongful means to collect a debt owed, to enforce a lawful contract, or to recover disputed property, would be exempt from the Hobbs Act. As Respondent NOW recognizes, under *Enmons*, "every defendant charged with extortion would claim a rightful purpose, whether political, religious, environmental, moral, or something else." NOW Opp. at 22. It would be difficult for a court to find any ideological objective wrongful, as that requires a value judgment as to the validity of the viewpoint. *See West Virginia State Bd. of Educ. v. Barnette,* 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official . . . can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion"); *cf. Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995) (government sanction based on viewpoint of speaker contrary to First Amendment); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918-19 (1982) (state may not impose civil liability based on affiliation).

Enmons places even the most egregious campaigns of orchestrated violence in pursuit of a legitimate objective safely beyond the Hobbs Act's reach. An environmental extremist group shooting at truck drivers and dropping projectiles on trucks transporting nuclear waste over the nation's highways, in an attempt to compel the trucking company not to transport such waste, would be exempt from federal sanction under *Enmons*. Seeking to limit the use of nuclear energy is a common, legitimate objective.

The sweeping scope of the *Enmons* exemption would subvert the Hobbs Act's purpose, which is to punish anyone who "obstructs, delays, or affects commerce or the movement of any article or commodity in commerce by . . . extortion." 18 U.S.C. § 1951(a); *see Stirone*, 361 U.S. at 215 (Congress intended to use all of the constitutional power it had to punish interference with interstate commerce). For example, *Overnite* involved a nationwide campaign against a large trucking company. 168 F. Supp. 2d at 832-34. Violence was alleged to have occurred in twenty-one states. *Id.* at 835 n.2. If true, it is an enormous interference with interstate commerce. Yet, *Enmons* exempted it from federal sanction.

IV. *Enmons* Must Be Overruled.

This Court is confronted with the stark choice of applying *Enmons* to this case or overruling *Enmons*. The lower courts' arbitrary restriction on *Enmons*' scope is untenable–the term "wrongful" either applies to the phrase "obtaining of property" in the definition of extortion, or it does not. Until *Enmons* is overruled, *stare decisis* mandates that a wrongful obtaining of property is a prerequisite for extortion under the H[illegible] Act. As discussed above, the ramifications of this are [illegible]acceptable. Thus, this Court should overrule *Enmons* and return to the plain meaning of the Hobbs Act, under which a wrongful objective is not a prerequisite for extortion.

Stare decisis does not prevent this Court from reconsidering *Enmons*. Under the rationales invoked in *Hubbard v. United States*, 514 U.S. 695 (1995), the lower court jurisprudence contrary to *Enmons* undercuts its claim to *stare decisis*. The lack of a legitimate reliance interest in the decision has the same effect. Since *Enmons* itself is a deeply flawed opinion, this Court should overrule it to avoid the unpalatable consequences of having to apply it to the protesters and all other defendants.

A. *Enmons* Should Be Overruled Under the Rationales Utilized in *Hubbard v. United States.*

In *Hubbard*, this Court confronted a situation identical to the one at bar. *Hubbard* involved 18 U.S.C. § 1001, which criminalizes making false statements in any "department . . . of the United States." The issue was whether the statute applied to false statements made in judicial proceedings. In *United States v. Bramblett,* 348 U.S. 503 (1955), this Court had held that an Article III court is a "department." However, the lower courts subsequently adopted a "judicial function exception," exempting false statements made while a court is performing adjudicative functions. *See Hubbard,* 514 U.S. at 698-99. The judicial function exception was "an obvious attempt to impose limits on *Bramblett's* expansive reading of § 1001." *Id.* at 708. It was also textually incompatible with *Bramblett*, as a court is either a "department," or it is not. *Id.* at 712.

Two different lines of reasoning were utilized in *Hubbard* to reach the same result. Justice Stevens, writing for the plurality, held that the judicial function exception was a competing legal doctrine, and thus *stare decisis* did not necessarily compel allegiance to *Bramblett*. 514 U.S. at 715. A concurrence led by Justice Scalia found that the existence of the judicial function exemption demonstrated the impropriety of *Bramblett*. *Id.* at 716. Both opinions rejected using the judicial function exception to limit *Bramblett*, as it lacked a textual

basis. *Id.* at 713, 716. Ultimately, a six-member majority in *Hubbard* opted to overrule *Bramblett* and return to the plain meaning of § 1001. *Id.* at 715.

The parallels between *Hubbard* and the situation here are compelling. Both involve statutory interpretations by this Court (*Bramblett* and *Enmons*) that lower courts have limited because of the ill consequences of applying them. In both cases, this Court's opinions and the respective lower court jurisprudence limiting those interpretations are incompatible under the statutes' text. Accordingly, use of the rationales employed in *Hubbard* is apt. *Enmons* and the artificial restrictions placed upon it should be overruled, and the plain meaning of extortion under the Hobbs Act reinstated.

(1) Lower Court Jurisprudence Is a Competing Legal Doctrine Entitled to *Stare Decisis* Effect.

The plurality in *Hubbard* found the jurisprudence supporting the judicial function exception to be an "intervening development of the law." 514 U.S. at 713 (quoting *Patterson v. McLean Credit Union,* 491 U.S. 164, 173 (1989)). "[T]he judicial function exception is almost as deeply rooted as *Bramblett* itself." 514 U.S. at 708. "It is thus fair to characterize the judicial function exception as a '*competing* legal doctrin[e]' that can lay a legitimate claim to respect as a settled body of law. Overruling *Bramblett* would preserve the essence of [*stare decisis*] and would, to that extent, promote stability in the law." *Id.* at 713 (emphasis added; citation & footnote omitted).

There is extensive intervening lower court jurisprudence holding that a wrongful objective is not a criterion for extortion under the Hobbs Act. "[I]n an extortion case, a defendant's claim of right to the property is irrelevant. One may be found guilty of extortion even for obtaining one's own property." *United States v. Sturman*, 49 F.3d 1275, 1284 (7th Cir. 1995)

(citing *United States v. Castor*, 937 F.2d 293, 299 (7th Cir. 1991)); *see also Zappola*, 677 F.2d at 269 ("Congress meant to punish as extortion any effort to obtain property by inherently wrongful means, . . . regardless of the defendant's claim of right to the property"). This rule has deep roots in state extortion law. *See State v. Bruce*, 24 Me. 71 (1844).[5] It is also consistent with the plain meaning and legislative history of the Hobbs Act. *See* Part IV(C)(i) *infra*.

Lower courts utilize this doctrine when the statutory construction *Enmons* adopted is not followed.[6] This is the vast majority of the time, as lower courts refuse to apply *Enmons* outside of the labor context.[7] Lower courts have expressly declined to consider an allegedly lawful right to the property

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[5] A person whose property has been stolen cannot claim the right to punish the thief himself, without process of law, and to force him to compensate him for the loss of his property by maliciously threatening to accuse him of the offense, or to do an injury to his person or property, with intent to extort property from him. *State v. Bruce*, 24 Me. 71 (1844); *see People v. Beggs*, 172 P. 152 (Cal. 1918); *State v. Phillips*, 115 P.2d 418 (Idaho 1941); *Commonwealth v. Coolidge*, 128 Mass. 55 (1880); *In re Sherin*, 130 N.W. 761 (S.D. 1911).

[6] As discussed in Part II *supra*, the refusal of lower courts to follow *Enmons* in all situations is doctrinally untenable.

[7] *See Porcaro*, 648 F.2d at 760 ("We are aware of no case sustaining an *Enmons* defense to a Hobbs Act conviction outside the labor area, and of several that have explicitly declined to do so"); *Russo*, 708 F.2d at 215 ("*Enmons*' exception to the application of the Hobbs Act has been held to be confined to payments gained or sought in furtherance of legitimate *labor* objectives") (emphasis in original; citation omitted); *Terzi*, 2 F. Supp. 2d at 507 ("*Enmons* should be read narrowly to apply only in the employer-employee context"); *Hall Am. Ctr. Assoc. Ltd.*, 726 F. Supp. at 1095 ("*Enmons* . . . has been limited by most courts to the labor context.").

sought in situations involving a collection of a debt owed,[8] a contractual claim between businessmen,[9] a state employee's solicitation of political contributions,[10] and an Indian nation's property claim against a railroad.[11] Even within the collective bargaining context, use of *Enmons* is sharply limited.[12]

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[8] *See United States v. Zappola*, 523 F. Supp. 362, 368 (S.D.N.Y. 1981) ("you cannot beat someone up to collect a debt, even if you believe he owes it to you"), *aff'd*, 677 F.2d 264 (2d Cir. 1982); *see also French*, 628 F.2d at 1075 (*Enmons* does not protect extortion to collect a debt, as it does not apply to "other kinds of 'wrongful' taking of money to which the extortioner may also have a rightful claim").

[9] *Porcaro*, 648 F.2d at 760 ("no basis for extending *Enmons* to . . . use of force and threats to resolve a contractual dispute among businessmen").

[10] *Cerilli*, 603 F.2d at 419.

[11] *United States v. Warledo*, 557 F.2d 721, 730 (10th Cir. 1977).

[12] "Even within the labor context, some courts . . . have been reluctant to extend *Enmons* to union activities beyond the scope of traditional employer-employee labor disputes." *Terzi*, 2 F. Supp. 2d at 505 (citing *United States v. Debs*, 949 F.2d 199, 200 (6th Cir. 1991) (*Enmons* does not apply to violence incident to union election campaign)); *see United States v. Jones*, 766 F.2d 994, 1002-03 (6th Cir. 1985) (doubting whether *Enmons* covers use of violence to persuade employees of non-union employer to join union); *United States v. Stofsky*, 409 F. Supp. 609, 616 (S.D.N.Y. 1973) (doubting whether *Enmons* applies to force used against neutral, non-union employer, as "it must be recognized that *Enmons* deals specifically with employer-employee disputes"); *United States v. Quinn*, 514 F.2d 1250, 1259-60 (5th Cir. 1975) (violent labor picketing not protected by *Enmons* when defendant "was never authorized by [the company's] employees to represent them"); *Domestic Linen Supply & Laundry Co. v. Central States, Southeast & Southwest Areas Pension Fund*, 722 F. Supp. 1472 (E.D. Mich. 1989) (*Enmons* does not protect violence incident to union's objective to include supervisors in the collective bargaining unit).

However, this doctrine and *Enmons* are mutually incompatible within the text of the Hobbs Act. *Enmons* mandates that the term "wrongful" modify the phrase "obtaining of property," in the definition of extortion. *See* Parts I and II(A) *supra*. The jurisprudence that does not take into consideration the legitimacy of the objective requires that the term "wrongful" *not* apply to the phrase "obtaining of property." Because the text of a statute can only be read one way, the doctrines are irreconcilable and cannot coexist.

Because both doctrines are established precedent, *stare decisis* supports retaining either. *See Hubbard*, 514 U.S. at 712 (considerations of *stare decisis* "point in two conflicting directions"). Accordingly, overruling *Enmons* and adopting the plain meaning of the Hobbs Act–in which a wrongful obtaining of property is not a prerequisite–does not infringe upon the sanctity of *stare decisis*, as it supports an equally deep line of jurisprudence.

(2) Refusal of Lower Courts to Follow *Enmons* for Fear That It Undermines the Hobbs Act Demonstrates Its Impropriety.

Justices Scalia's and Kennedy's concurrence in *Hubbard* held that the existence of the judicial function exemption demonstrated *Bramblett* to be erroneous:

> [T]he significance I find in the fact that so many Courts of Appeals have strained so mightily to discern an exception that the statute does not contain . . . demonstrates how great a potential for mischief federal judges have discovered in the mistaken reading of 18 U.S.C. § 1001, a potential we did not fully appreciate when *Bramblett* was decided.

514 U.S. at 716 (Scalia, J., concurring in part and concurring in judgment).

Federal appellate and district courts have literally restricted *Enmons* to its facts.[13] Their refusal to follow *Enmons*' construction of the Hobbs Act is compelling evidence of its impropriety. Generally, any statutory interpretation that cannot be applied, lest it undermine the statute itself, is inherently flawed. Here, the lower courts have expressly stated that their refusal to utilize *Enmons* is due to the legitimate fear that it "could effectively repeal the Hobbs Act." *See* cases cited n.4 *supra*; *see also* Part III *supra*. The lower courts have all but proclaimed *Enmons* unfit to be utilized as precedent.

Enmons' flawed nature is grounds for overruling the decision–not artificially limiting its application with restrictions foreign to the statute's text. In *Hubbard*, the concurrence found that "*Bramblett*['s] . . . unacceptable consequences . . . can be judicially avoided (absent overruling) only by limiting *Bramblett* in a manner that is irrational or by importing exceptions with no basis in law." 514 U.S. at 716. This counseled overruling *Bramblett*, as importing exceptions cut from whole cloth is "much more arbitrary than simply overruling a wrongly decided case." *Id.* at 717; *see also Brogan*, 522 U.S. at 406-07 (rejecting as arbitrary the importing of case-by-case exceptions into criminal statutes).

Similarly, limiting *Enmons'* construction of the definition of extortion, as the lower courts have done, is unsupportable under the Hobbs Act's text and legislative history. *See* Part II

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[13] *See United States v. Debs*, 949 F.2d 199, 201 (6th Cir. 1991) ("*Enmons* has not been extended beyond its own facts"); *United States v. Jones*, 766 F.2d 994, 998 (6th Cir. 1985) ("Subsequent decisions of various courts of appeals have refrained from extending the rationale of *Enmons* beyond the facts of that case") (citations omitted); *Castor*, 937 F.2d at 299 ("Several courts have expressed the view that *Enmons* should be limited to its facts, specifically cases of obtaining property by force, threat or use of fear in the context of a labor dispute") (citations omitted).

supra. In fact, the primary reason lower courts have refused to apply *Enmons*–that it could subvert the Hobbs Act–is actually the most compelling justification for overruling the decision. Thus, *Enmons* should be overruled.

B. *Enmons* Is a "Seriously Flawed Opinion."

A prerequisite to overruling any decision is that it be erroneous. In *Hubbard*, the Court recognized that *Bramblett* was a "seriously flawed opinion" because it failed to follow the plain language of the statute, and because of misreading of legislative history. 514 U.S. at 702. Similarly, *Enmons* misconstrued the Hobbs Act's plain language and turned legislative history on its head.

(1) *Enmons* Is Contrary to the Plain Language of the Hobbs Act.

Enmons' consideration of the legitimacy of the objective sought by a defendant is contrary to the statute's plain meaning. "The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). The plain meaning of this language is that the term "wrongful" modifies only the "use of . . . [methods listed]." The words "induced by" immediately preceding the phrase "wrongful use of" make this clear. Thus, extortion under the Hobbs Act requires only wrongful *means*, not a wrongful *end*.

Enmons' construction is grammatically impossible. The adjective "wrongful" simply cannot reach back to modify

"obtaining of property." In fact, under the last antecedent rule,[14] the entire clause–"induced by wrongful use of . . . [methods listed]"–modifies only the phrase "with his consent," not the "obtaining of property" phrase.

The *Enmons* majority relied heavily on the proposition that applying the term "wrongful" to only the methods listed would render the adjective superfluous. 410 U.S. at 399-400. This concern is unfounded, as the term "wrongful" does add to the meaning of the methods listed. An entire field of jurisprudence details when use of "fear" is wrongful or legitimate, particularly economic fear.[15] Neither is obtaining property "under color of official right" inherently wrongful.[16] In regards to force, passive resistance, such as a sit-in or chaining oneself to a tree, is not necessarily wrongful. *See Town of West Hartford v. Operation Rescue*, 915 F.2d 92, 102 (2d Cir. 1990) (resistance to police

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[14] Under the last antecedent canon, modifying phrases and clauses in a statute are to be applied only to the word or phrase immediately preceding (*i.e.*, the last antecedent), and not to others more remote. *See Murphy Exploration & Prod. Co. v. U.S. Dep't of the Interior*, 252 F.3d 473, 482 (D.C. Cir. 2001); *Bell v. Reno*, 218 F.3d 86, 91 (2d Cir. 2000).

[15] *See Clemente*, 640 F.2d at 1077 ("fear of economic loss is not an inherently wrongful means"); *see also Sturm*, 870 F.2d at 773 ("We therefore hold that for purposes of the Hobbs Act, the use of legitimate economic threats to obtain property is wrongful only if the defendant has no claim of right to that property"(footnote omitted)); *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 503 (3d Cir. 1998); *Viacom Int'l, Inc. v. Icahn*, 747 F. Supp. at 210-11; 4 A.L.R. Fed. 881 (1970), § 6(b) (collecting cases).

[16] *See McCormick v. United States*, 500 U.S. 257, 271 (1991) (receipt of campaign contributions because of office not illegal without *quid pro quo*); *United States v. Snyder*, 930 F.2d 1090, 1093 (5th Cir. 1991) ("color of official right means the wrongful taking by a public officer of money or property not due to the officer or the office").

efforts to clear abortion protestors from health clinic is not a "'wrongful use of actual or threatened force, violence or fear,'" 18 U.S.C. § 1951(b)). Nor would threatening use of civil disobedience be inherently wrongful. Only actual use of violence would seem inherently wrongful in the context of the Hobbs Act.

(2) Legislative History Does Not Support *Enmons*.

Enmons relied on the legislative evolution of the Hobbs Act for the proposition that Congress did not consider seeking legitimate labor ends a wrongful obtaining of property meant to be proscribed by the Act. *See* 410 U.S. at 401-07. This conclusion is inconsistent with the Hobbs Act's history, congressional intent, and the rulings of this Court.

Congress enacted the Hobbs Act's current incarnation in direct response to *United States v. Local 807, Teamsters*, 315 U.S. 521 (1942). In *Local 807*, this Court exempted a Teamster highwayman scheme from prosecution on the basis of an exemption in § 2 of the Anti-Racketeering Act of 1934, 48 Stat. 979, for the "'payment of wages by a bona-fide employer to a bona-fide employee.'" *Enmons*, 410 U.S. at 401-03 (footnote omitted). Congress' primary purpose in passing the Hobbs Act was eliminating that exemption. *United States v. Green*, 350 U.S. 415, 419 n.5 (1956). Nevertheless, the *Enmons* majority utilized a handful of statements from the House floor to effectively read the exemption right back into the Act. *See* 410 U.S. at 403-08.[17]

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[17] The dissent in *Enmons* accurately points out that most of the legislative history relied on by the majority was from the 78th Congress, not the differently constituted 79th Congress that enacted the Hobbs Act. 410 U.S. at 414 (Douglas, J., dissenting).

Enmons' counter-intuitive conclusion that Congress, while removing organized labor's explicit textual exemption from the Hobbs Act, intended to exempt violent union campaigns from its auspices, is "unsound" at best. *Cf. Hubbard*, 514 U.S. at 705.[18] In *Green*, this Court recognized that "[t]he legislative history makes clear that the [Hobbs] Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding." 350 U.S. at 419 (footnote omitted). A vigorous dissent in *Enmons*, by four Justices, reached the same conclusion. 410 U.S. at 414-17 (Douglas, J., dissenting) (citing extensive legislative history).

Moreover, the startling moral implications of the intent *Enmons* subscribes to Congress cast serious doubt on the analysis. An unblinking analysis by the district court in *Overnite Transportation Co. v. Teamsters*, 168 F. Supp. 2d 826 (W.D. Tenn. 2001), concluded:

> The Supreme Court [in *Enmons*] recognized that violence, property damage, and extortion often went hand-in-hand with "lawful" strikes and was willing to exempt such conduct from the debilitating penalties of tough federal laws. In essence, the Supreme Court impliedly recognized the unique circumstances of labor disputes, and the reality that extortion is an integral part of the labor landscape.

Id. at 842. Can it be seriously contended that Congress considered violence a legitimate means of obtaining an objective, much less "an integral part of the labor landscape"?

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[18] As in *Enmons*, the *Bramblett* Court carried forward features from a predecessor statute that Congress had excised when it enacted the current version of the statute. 514 U.S. at 705-07. The *Hubbard* Court recognized this reasoning as "unsound," *id.* at 705, and a "historical misapprehension," *id.* at 708.

That proposition is not only shocking, but contrary to this Court's opinion in *Green*. There the Court said:

> There is nothing in [the Clayton Act, Norris LaGuardia Act, Railway Labor Act, or National Labor Relations Act] . . . that indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. *Those are not legitimate means for improving labor conditions.*

350 U.S. at 419-20 (emphasis added; footnote omitted); *see id.* at 420 n.7 (collecting cases). Yet, *Enmons* requires that Congress be attributed the motive described in *Overnite*.

Contrary to *Enmons*, Congress actually intended "'to prevent *anyone* from obstructing, delaying, or affecting commerce, or the movement of any article or commodity in commerce by robbery or extortion *as defined in the bill*.'" *United States v. Culbert*, 435 U.S. 371, 377-78 (1978) (quoting H.R. 238, 79th Cong., 1st Sess., 9 (1945)) (partial emphasis added). "The Act speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery, or physical violence." *Stirone*, 361 U.S. at 215. Exemptions for particular groups or industries were not intended.[19]

Moreover, New York state extortion law, upon which the Hobbs Act is based, recognized that a lawful claim to property sought through illegitimate means is not a defense for extortion. *See United States v. Pignatelli*, 125 F.2d 643, 647 (2d Cir. 1942); *see also People v. Fichtner*, 114 N.E.2d 212 (N.Y.

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[19] *See United States v. Hoelker*, 765 F.2d 1422, 1424-25 (9th Cir. 1985) (insurance industry not exempt); *United States v. Gill*, 490 F.2d 233, 237 (7th Cir. 1973) (liquor industry not exempt).

1953). This view was also widely accepted in other states when the Hobbs Act was enacted. *See* n.5 *supra*.

However, the most egregious error committed by the *Enmons* majority was utilizing legislative history to avoid the Hobbs Act's plain meaning. "Courts should not rely on inconclusive statutory history as a basis for refusing to give effect to the plain language of an Act of Congress . . . ." *Hubbard*, 514 U.S. at 708; *see also id.* at 702-03 ("a historical analysis normally provides less guidance to a statute's meaning than its final text"); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992) ("when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished"). The conclusions the *Enmons* majority drew from legislative history cannot be squared with the Hobbs Act's text. The statute's plain meaning precludes consideration of whether a defendant is seeking a legitimate objective, as the term "wrongful" simply does not modify the phrase "obtaining of property."

C. *Stare Decisis* Is Undermined by Lack of a Reliance Interest in *Enmons*.

"*Stare decisis* is a 'principle of policy,' and not 'an inexorable command.'" *United States v. International Bus. Machs. Corp.*, 517 U.S. 843, 856 (1996) (citations omitted). Reliance is one of these policies, as overruling a previous decision has the potential to "'dislodge settled rights and expectations or require an extensive legislative response.'" *Hubbard*, 514 U.S. at 714 (quoting in part *Hilton v. South Carolina Pub. Ry. Comm'n*, 502 U.S. 197, 202 (1991)). In *Hubbard*, "the absence of significant reliance interests in adhering to *Bramblett*" was a key factor in overruling the latter case. *Hubbard*, 514 U.S. at 713. Similarly, the lack of legitimate reliance on *Enmons* undercuts its claim to *stare decisis*.

There is not, and cannot be, a reliance interest in *Enmons*. *Enmons*' practical effect is to excuse campaigns of force and violence, otherwise actionable under the Hobbs Act, from liability because of their ostensibly legitimate objectives. Only persons who orchestrate violent or threatening undertakings can possibly rely on the shelter *Enmons* provides. Providing refuge for scoundrels is not a legitimate reliance interest. *See id.* at 717 (Scalia, J., concurring) ("Those whose reliance on *Bramblett* induced them to tell the truth to Congress or the courts, instead of lying, have no claim on our solicitude") .

Overruling *Enmons* would not expose legitimate means of applying pressure, such as lawful picketing or political demonstrations, to liability under the Hobbs Act.[20] Such tactics, if nonviolent, could only constitute "fear" under the Hobbs Act. Use of fear, particularly economic fear, is not "wrongful" in a variety of circumstances. *See* n.15 *supra*.

Thus, a typical labor strike, boycott, or political demonstration will not be sanctionable under the Hobbs Act if *Enmons* is overruled. Only campaigns that utilize illegitimate means, such as violence, will fall under its auspices. Force and violence are not legitimate methods to obtain any objective in a civil society, including union goals. *See Green,* 350 U.S. at 420 ("[threats of force or violence] are not legitimate means for improving labor conditions"); *id.* at 420 n.7 (collecting cases). In fact, the Hobbs Act's very purpose is to punish such behavior when it interferes with interstate commerce. *See Stirone*, 361 U.S. at 215.

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[20] In *Enmons*, the majority mistakenly feared such a result: "The Government's broad concept of extortion . . . would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce." 410 U.S. at 410.

D. *Enmons*' Ramifications Justify Overruling It.

Finally, the most compelling justification for overruling *Enmons* is the negative ramifications of not doing so. As recognized by the lower courts and demonstrated in Part III *supra*, the consequences of allowing a legitimate objective to automatically exempt a defendant from the Hobbs Act would be catastrophic for both the Act and the interests it protects. Since *Enmons* is a textual interpretation that cannot rationally be limited to its facts, this Court must overrule *Enmons* to avoid its odious ramifications.

CONCLUSION

For the reasons articulated in this brief, *Enmons*' construction of the Hobbs Act either must be applied to the protesters or overruled. Although *Amicus Curiae* National Right to Work Legal Defense Foundation takes no position regarding whether the opinion of the United States Court of Appeals for the Seventh Circuit should be affirmed or reversed, *amicus* does

seek equal application of the law. *Amicus* respectfully urges that this Court overrule *Enmons*.

Respectfully submitted,

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